

Doc Code: PET.OP

Document Description: Petition for Review by the Office of Petitions

PTO/SB/64 (04-09)

Approved for use through 05/31/2009. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)
JHM810First named inventor: BELL, Yvonne F.Application No.: 09/774,807Art Unit: 3626Filed: February 1, 2001Examiner: Gilligan, Christopher LTitle: LIFENET

Attention: Office of Petitions
Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450
 FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional

1. Petition Fee

- Small entity-fee \$ 810.00 (37 CFR 1.17(m)). Application claims small entity status. See 37 CFR 1.27.
 Other than small entity-fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

- A. The reply and/or fee to the above-noted Office action in the form of Continuation Application #11/307,308 (identify type of reply):

- has been filed previously on 12/22/2005.
 is enclosed herewith.
- B. The issue fee and publication fee (if applicable) of \$ 05/13/2009 MGEBREM1 00000026 09774807
 has been paid previously on 01 FC:2453 810.00 OP
 is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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3. Terminal disclaimer with disclaimer fee

- Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.243(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature

Type or Printed name

Address

Address

Date

Registration Number, If applicable

Telephone Number

Enclosures:

- Fee Payment
- Reply
- Terminal Disclaimer Form
- Additional sheets containing statements establishing unintentional delay
- Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.
- Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date_____
Signature_____
Typed or printed name of person signing certificate



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bell, Yvonne : Confirmation No.: 2714
Serial No. 9/774,807 : Group Art Unit: 3626
Filed: February 1, 2001 : Examiner: Gilligan, Christopher L
Title: LIFENET

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT ESTABLISHING THE UNINTENTIONAL DELAY

Sir:

The applicant has filed a Petition To Revive an Application Abandoned Due to an Unintentionally Delayed Response to an Office Action, under 37 C.F.R. 1.137(b) for Application No. 09/774,807. Late in 2005, the applicant engaged the firm of A Plus Legal Services to take over prosecution of her pending Application No. 09/774,807 (the '807 application) that was filed February 1, 2001. At that time there was an office action pending for the '807 application dated 8/24/2005 that required a response. A Plus Legal Services advised the applicant to file a new application based on the '807 application and including new matter and new claims. The applicant maintains it was her understanding that the new application would be a continuation-in-part application that would claim the benefit of Application No. 09/774,807.

In fact, Application 11/306,328 (the '328 application) was filed by A Plus Legal Services on 12/22/2005 and is currently pending in the USPTO. On or about September 2008, during a review of the application status by a newly-engaged practitioner, it was discovered that the '328 did NOT properly claim the benefit of the prior-filed Application 09/774,807, and furthermore was filed after

the expiration of the SSP following an Office Action dated August 24, 2005. The '807 application was abandoned on 11/24/2005 for failure to timely reply to the office action of 8/24/2005.

In the opinion of the current practitioner of record, there is patentable subject matter contained in the original application that should be considered, however that subject matter requires capturing the benefit of the 2/1/2001 filing date of the '807 application. Because the '328 application was filed after the expiration of the SSP and then abandoned on 11/24/2005, it is necessary to revive the '807 application in order to achieve copendency necessary to make the delayed claim for priority,

Michael Greenberg, formerly of A Plus Legal Services and now of Greenberg & Lieberman LLC, was contacted on 4/20/2009 as part of an effort to confirm the applicants recollection that a continuation-in-part was to be filed on her behalf.

Mr. Greenberg's initial recollection was that a CIP was indeed filed, and he referred to the "CIP" several times in the initial conversation. It was explained to Mr. Greenberg that the '328 application did not claim benefit of priority, and he agreed to research his files to try to figure out what might have happened.

Mr. Greenberg responded the next day via email and explained that he could not find any records that could confirm the reason the '328 application was not filed as a continuation-in-part. He speculated that he would have advised the applicant to file a new application in order to get a new examiner who might have a deeper understanding of the invention. He also mentioned the cost of extension fees and lack of patentable material in the original application as possible reasons for filing a new application.

Mr. Greenberg's recollection is contrary to the record, however. An Examiner-Initiated Interview Summary, dated 3/2/2006 and referring to Application 09/774,807, contains the substance of an interview between Examiner Luke Gilligan and Stephen Lieberman, formerly of A Plus Legal Services and now of Greenberg & Lieberman LLC. During that interview Mr.

Lieberman, acting as the applicants representative, "indicated that the current Application was being abandoned in favor of a Continuation in Part." It should be noted that as of the date of the interview, the office action of 8/24/2005 was still pending and could have been responded to with the payment of an extension fee.

It is clear that, up to the final date where response to the office action was due, the intention of A Plus Legal Services was to file a continuation-in-part application that would have preserved the benefit of priority. It is therefore reasonable that the applicant was, and remains, under the impression from the practitioner of record that the new application would be a continuation-in-part.

CONCLUSION

The applicant respectfully requests the Petition To Revive an Application Abandoned Due to an Unintentionally Delayed Response to an Office Action, under 37 C.F.R. 1.137(b) for Application No. 09/774,807 be granted.

In the event the examiner wishes to discuss any aspect of this response, please contact the agent at the telephone number identified below.

Respectfully submitted,

By: 
DONALD FRANKLIN MOYER
38, 568

Don Moyer
xxx-xxx-xxxx

312 753 5123



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bell, Yvonne : Confirmation No.: 2714
Serial No. 9/774,807 : Group Art Unit: 3626
Filed: February 1, 2001 : Examiner: Gilligan, Christopher L
Title: LIFENET

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REPLY TO OFFICE ACTION

Sir:

In response to the Office Action dated as mailed on August 24, 2005, and having a period of response extending through and including November 24, 2005, please consider the following remarks:

The applicant has filed a Petition for an Unintentionally Delayed Benefit Claim under 37 C.F.R. 1.78(a)(3) for Application No. 11/306,328 claiming the benefit of Application No. 09/774,807. The petition was filed on December 23, 2008. Upon revival of Application No. 09/774,807, the '328 application will become a copending continuation application of the parent '807 application.

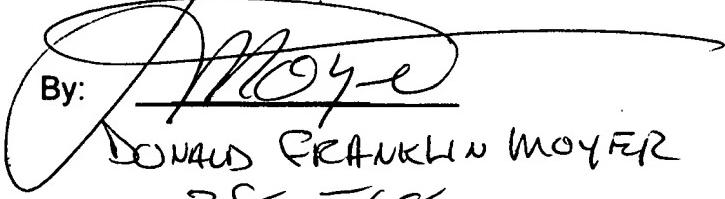
CONCLUSION

The applicant respectfully requests Application No. 11/306,328 be accepted as the properly filed reply to the Office Action.

In the event the examiner wishes to discuss any aspect of this response, please contact the agent at the telephone number identified below.

Respectfully submitted,

By:


DONALD FRANKLIN MOYER
38, 568

Don Moyer

~~XXXXXXXXXX~~

212-753-5123